

REMARKS

Claims 1-22 were examined and reported in the Office Action. Claims 1-18 and 20-22 are rejected. Claim 16 is cancelled. Claims 1-15 and 17-22 are amended. New claims 23-30 are added. Claims 1-15 and 17-30 remain. Applicant has amended the limitation of "cylindrical wall" or "inner cylindrical wall" (this being wall 12) to read "lower cylindrical wall" to distinguish this cylindrical wall from the inner cylindrical wall 7 and the cylindrical wall 5.

Applicant requests reconsideration of the application in view of the following remarks.

I. Claim Objections

Claim 19 is objected to under 37 C.F.R. §1.75(c) as being in improper form. Applicant has amended claim 19 to overcome the 37 C.F.R. §1.75(c) objection.

Accordingly, withdrawal of the 37 C.F.R. §1.75(c) objection for claim 19 is respectfully requested.

II. 35 U.S.C. §112, second paragraph

It is asserted in the Office Action that claim 20 is rejected under 35 U.S.C. §112, second paragraph because there is insufficient antecedent basis for a limitation in the claim. Applicant has amended claim 20 to overcome the 35 U.S.C. §112, second paragraph rejection.

Accordingly, withdrawal of the 35 U.S.C. § 112 rejection for claim 20 is respectfully requested.

III. 35 U.S.C. §102(b)

It is asserted in the Office Action that claims 1, 2, 13-15 and 20 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,501,430 issued to Esselink

("Esselink"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

Applicant has amended claim 13 with the limitations of cancelled dependent claim 16. As asserted in the Office Action, claim 16 would be allowable if re-written in independent form. Therefore, Applicant's amended claim 13 is now allowable.

According to MPEP §2131,

'[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). 'The identical invention must be shown in as complete detail as is contained in the ... claim.' (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Applicant's amended claim 1 contains the limitations of

[a]n electronic button tag for tagging and identifying cattle comprising a transponder, programmable or not, enclosed in a shell, said shell comprising an open-ended or blind axial transverse passage for a fixing means to the ear of the animal, characterised in that: the shell is made from two half-shells namely a lower half-shell and an upper half-shell, which are assembled together at a median plane which is disposed transversely to the axial passage opening for the fixing means, the transponder is fixed in place without compression between the two half-shells using a glue, the two half-shells are assembled by a laser weld.

It is asserted in the Office Action that Esselink discloses two half-shelves. Applicant respectfully disagrees. Esselink discloses a shell 1, which is formed by a wall 2 and a peripheral edge 4, the latter providing a slot into which at least one winding of a transponder is fitted.

In Esselink, once the transponder and winding has been fitted to the shell 1, 2 and 4 and the chiefly second part 16 has been fitted to the wall 14 of the shell, the entire assemblage is over moulded by injection moulding (see Esselink, column 3, lines 27-41). The over moulding cannot be considered to constitute an upper half-shell as there is no actual shell formed by the over moulding. The molten plastic under pressure in the injection moulding process will fill the interior of the shell 1, 2 and 14 and, as illustrated, and extends over the sides of the lower half of the shell to encase the winding 22.

Esselink does not describe two half-shells that can be fitted together and assembled by a laser weld. Most importantly, the transponder is not enclosed in a shell and fixed in place without compression between the two half-shells using a glue. In Esselink the transponder is fitted into the open topped compartment 10 (which is formed as part of the lower shell and there is no disclosure of the transponder not being subjected to compression. In fact, the very act of applying an over moulding to the lower shell portion applies a pressure on the transponder itself as the molten plastic is injected at a high pressure.

Further, there is no disclosure in Esselink of how this pressure or compression would be prevented from acting on the transponder. Because of the open topped compartment 10, the plastic will, during the moulding process, make its way into the compartment 10 and come into contact with the transponder. The net result is the possibility of causing damage to the functioning of the transponder and, of course, to the antenna (winding). For this reason it is incorrect to assert that over moulding on top of a preformed shell is similar to assembling two preformed shells.

Therefore, Esselink does not teach, disclose or suggest Applicant's claim 1 limitations of

[a]n electronic button tag for tagging and identifying cattle comprising a transponder, programmable or not, enclosed in a shell, said shell comprising an open-ended or blind axial transverse passage for a fixing means to the ear of the animal, characterised in that: the shell is made from two half-shells namely a lower half-shell and an upper half-

shell, which are assembled together at a median plane which is disposed transversely to the axial passage opening for the fixing means, the transponder is fixed in place without compression between the two half-shells using a glue, the two half-shells are assembled by a laser weld.

Therefore, since Esselink does not disclose, teach or suggest all of Applicant's amended claims 1 and 13 limitations, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. § 102(b) has not been adequately set forth relative to Esselink. Thus, Applicant's amended claims 1 and 13 are not anticipated by Esselink. Additionally, the claims that directly or indirectly depend on claims 1 and 13, namely claims 2, and 14-15 and 20, respectively, are also not anticipated by Esselink for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejections for claims 1, 2, 13-15 and 20 are respectfully requested.

IV. Allowable Subject Matter

Applicant notes with appreciation the Examiner's assertion that claims 3-12, 16-18 and 21-22 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As asserted above, Applicant has amended claim 13 by adding the limitations of claim 16 which corresponds to claim 16 rewritten in independent form. Also, Applicant's new Claim 23 is a combination of Claims 1, 2 and 3, which corresponds to claim 3 rewritten in independent form.

Applicant respectfully asserts that claims 1-15 and 17-30, as they now stand, are allowable for the reasons given above.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-15 and 17-30 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

PETITION FOR EXTENSION OF TIME

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on October 5, 2006, Applicant respectfully petitions the Commissioner for a one (1) month extension of time, extending the period for response to February 5, 2007. The Commissioner is hereby authorized to charge payment to Deposit Account No. 02-2666 in the amount of \$60.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(1) small entity. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated: January 25, 2007

By: _____

Steven Laut, Reg. No. 47,736

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(310) 207-3800

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

Jean Svoboda

Date: January 25, 2007